

1 LINDBERGH PORTER, JR., Bar No. 100091  
2 RICHARD H. RAHM, Bar No. 130728  
3 ALISON S. HIGHTOWER, Bar No. 112429  
4 LITTLER MENDELSON  
5 A Professional Corporation  
6 650 California Street, 20th Floor  
7 San Francisco, CA 94108-2693  
8 Telephone: (415) 433-1940  
9 Facsimile: (415) 399-8490  
E-mail: lporter@littler.com  
rrahm@littler.com  
ahightower@littler.com

10 Attorneys for Defendant WELLS FARGO HOME  
11 MORTGAGE, a division of WELLS FARGO  
12 BANK, NATIONAL ASSOCIATION

13 KEVIN J. McINERNEY, Bar No. 46941  
14 KELLY McINERNEY, Bar No. 200017  
15 CHARLES A. JONES, Bar No. 224195  
16 McINERNEY & JONES  
17 18124 Wedge Parkway #503  
18 Reno, NV 89511  
19 Telephone: (775) 849-3811

20 CALIFORNIA CLASS COUNSEL

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 In Re:

25 Case No. MDL 06-CV-1770 MHP

26 WELLS FARGO HOME MORTGAGE  
27 OVERTIME PAY LITIGATION

28 **STIPULATION AND [PROPOSED]  
ORDER ENJOINING CALIFORNIA  
CLASS MEMBERS FROM  
PARTICIPATING IN QUESTIONNAIRE  
IN STRICKLER CASE**

29 THIS DOCUMENT RELATES TO  
30 MEVORAH v. WELLS FARGO HOME  
31 MORTGAGE

1                   Counsel for Wells Fargo Home Mortgage, a division of Wells Fargo Bank  
 2 (“WFHM”) and California Class Counsel of Wells Fargo’s Home Mortgage Consultants (“HMCs”),  
 3 hereby stipulate to the following:

4                 1. Plaintiff Jason Mevorah filed his class-action complaint against WFHM on  
 5 February 10, 2005 (“California Federal Action”), which was removed to this Court, alleging that  
 6 WFHM misclassified its HMCs as exempt and, for this reason, did not pay them overtime in alleged  
 7 violation of both the Fair Labor Standards Act and the California Labor Code.

8                 2. On May 15, 2006, Laura Strickler filed an action against WFHM in San Diego  
 9 Superior court, entitled, *Strickler v. Wells Fargo Bank*, Case No. GIN052537 (“Strickler Action”).  
 10 Strickler is represented by the Initiative Legal Group, LLP. In her Second Amended Complaint,  
 11 Strickler alleges causes of action for penalties pursuant to the California Labor Code Private  
 12 Attorneys Act, Labor Code sections 2698, *et seq.*, which overlap with the misclassification-overtime  
 13 claims in the California Federal Action. In one cause of action, Strickler alleges that WFHM  
 14 allegedly misclassified its California HMCs as exempt and, therefore, they were not paid overtime in  
 15 alleged violation of the California Labor Code. Similarly, in another cause of action, Strickler  
 16 alleges that WFHM, because it allegedly misclassified its HMCs as exempt, violated the Labor Code  
 17 by providing HMCs with wage statements that did not show the number of hours worked.

18                 3. On October 18, 2007, this Court certified a class of HMCs in the California  
 19 Federal Action with respect to alleged misclassification-overtime issues (“California Class”). It also  
 20 appointed the law firms of McInerney & Jones and Hoffman & Lazear as class counsel for the  
 21 California Federal Action (“California Class Counsel”).

22                 4. On September 5, 2008, the Superior Court in the *Strickler* Action, Judge  
 23 Michael B. Orfield, presiding, indicated that it would order the proposed questionnaire (the  
 24 “Questionnaire”) to be sent to all California HMCs who have been employed by WFHM from May  
 25 15, 2005 to the present, but would stay his order for a period of thirty days to allow both WFHM and  
 26 California Class Counsel to seek an order from the district court in this action enjoining California  
 27 class members from responding to the Questionnaire. The Questionnaire is attached hereto as  
 28 Exhibit A.

1           5. Both California Rule of Professional Conduct 2-100 and ABA Model Rule of  
 2 Professional Conduct 4.2 prohibit a lawyer from communicating with another party who is  
 3 represented about the “subject of the representation.” In this respect, “communicating with the class  
 4 members after [a] court had … certified the class” violates these rules. *Tedesco v. Mishkin*, 629 F.  
 5 Supp. 1474, 1483 (S.D. N.Y. 1986). *See also Resnick v. American Dental Ass’n*, 95 F.R.D. 372, 377  
 6 (D.C. Ill. 1982) (“After a court has certified a case as a class action … Defense counsel must observe  
 7 the rules of ethical conduct in these circumstances and communicate with the opposing parties  
 8 through their attorney, who is counsel for the class.”) (quoting from 2 Newberg, *Class Actions*  
 9 § 2730(d), at 1220 (1977)). Thus, sending the Questionnaire to HMCs who are presently represented  
 10 by counsel with respect to the subject of the representation would violate both California and the  
 11 ABA codes of professional responsibility. Moreover, California Class Counsel strenuously objects  
 12 to the Questionnaire being sent to California HMCs as it solicits testimony, without advice of  
 13 counsel, concerning possible damages in the California Federal Action. California Class Counsel  
 14 also believes that the Questionnaire will cause confusion within the California Class concerning the  
 15 subject matter of the California Federal Action.

16           6. This Court has also imposed a partial stay of discovery in the California  
 17 Federal Action. Pursuant to the All Writs Act, a District Court can enjoin a state-court action “in aid  
 18 of preserving [the court’s] jurisdiction.” 28 U.S.C. § 1651. Thus, a court may enjoin absent  
 19 members of a plaintiff class from prosecuting separate class actions in state court. *See Carlough v.*  
 20 *Amchem Products, Inc.*, 10 F. 3d 189, 204 (3rd Cir. 1993) (“it is within the sound discretion of the  
 21 District Court to enjoin their action in state court”). Likewise, an injunction against “duplicative  
 22 state suits” may be applied not only to the named plaintiffs, but also to “unnamed class members  
 23 [who] have the status of parties for many purposes and are bound by the [District Court’s] decision  
 24 whether or not the court otherwise would have had personal jurisdiction over them.” *In re*  
 25 *Bridgestone/Firestone, Inc., Tires Products Liability Litigation*, 333 F. 3d 763, 768 (7th Cir. 2003).  
 26 Finally, a District Court may enjoin state litigation in a Multidistrict Litigation action, where it found  
 27 that “the need to enjoin conflicting state proceedings arises because the jurisdiction of a multidistrict  
 28 Court is ‘analogous to that of a court in an *in rem* action or in a school desegregation case, where it

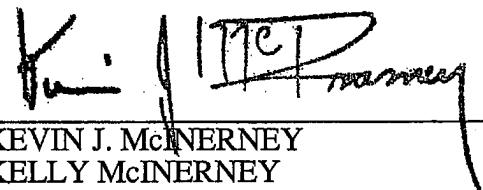
1 is intolerable to have conflicting orders from different courts.”” *In re Baldwin-United Corp. (Single*  
2 *Premium Deferred Annuities Ins. Litigation*), 770 F. 2d 328, 337 (2nd Cir. 1985) (citing 17 C.  
3 Wright & A. Miller & E. Cooper, *Federal Practice & Procedure* § 4225 at 105 n. 8 (Supp. 1985)).  
4 This Court thus has jurisdiction over the named and absent members of the California Class.

5       7. Based on the above, counsel for WFHM and California Class Counsel request  
6 the Court to issue an order enjoining named and absent class members in the California Federal  
7 Action from responding to the Questionnaire, or responding to any other communication sent by any  
8 attorney or agent of the Initiative Legal Group, LLP, concerning the subject matter of the California  
9 Federal Action, without permission of California Class Counsel.

10

11

Dated: September 9, 2008



12  
13 KEVIN J. MCINERNEY  
14 KELLY MCINERNEY  
15 CHARLES A. JONES  
MCINERNEY & JONES  
16 Class Counsel for the  
CALIFORNIA FEDERAL ACTION

17

18

Dated: September 9, 2008



19  
20 LINDBERGH PORTER, JR.  
21 RICHARD H. RAHM  
22 ALISON S. HIGHTOWER  
23 LITTLER MENDELSON  
24 A Professional Corporation  
Attorneys for Defendant  
WELLS FARGO HOME MORTGAGE,  
a division of WELLS FARGO BANK,  
NATIONAL ASSOCIATION

25

26

27

28

## ORDER

Based on the attached Stipulation, the Court finds that there is good cause to enjoin the named and absent class members in the action entitled, *Mevorah v. Wells Fargo Home Mortgage* (the “California Federal Action”), from responding to, or in any other way communicating with counsel for plaintiff in the action entitled, *Strickler v. Wells Fargo Bank*, San Diego County Superior Court Case No. GIN052537, concerning, the Questionnaire attached hereto as Exhibit A. The Court further enjoins the named and absent class members in the California Federal Action from communicating with any attorney or agent of the Initiative Legal Group, LLP, concerning the subject matter of the California Federal Action, without the permission of California Class Counsel.

**SO ORDERED.**

Dated: September 10, 2008



Firmwide:86565785.1 051995.1003

# Exhibit A

## **WELLS FARGO HOME MORTGAGE CONSULTANT SURVEY**

STRICKLER V. WELLS FARGO  
San Diego Superior Court, Case No. GIN 052537

You are being sent this survey because you are or were a Home Mortgage Consultant with Wells Fargo. Hon. Michael Orfield, the Judge in the lawsuit entitled *Strickler v. Wells Fargo*, San Diego Superior Court, Case No. GIN 052537, has ordered that this survey be sent to certain Wells Fargo employees to determine if any California Labor Code violations have been committed by Wells Fargo.

- YOU ARE RECEIVING THIS SURVEY BY ORDER OF THE COURT.
- YOU ARE NOT BEING SUED, NOR ARE YOU SUING WELLS FARGO.
- YOUR PARTICIPATION IS ENTIRELY VOLUNTARY.
- THE INFORMATION YOU PROVIDE MAY ENTITLE YOU TO PAYMENT IN CONNECTION WITH THIS LAWSUIT AGAINST WELLS FARGO. HOWEVER, THERE IS NO GUARANTEE OF RECOVERY.

If you choose to fill out this Employment Experience Survey, please do so to the best of your recollection. If you find it helpful to consult either your official employment records (pay stubs, W-2 Forms, etc.) or your own personal records (such as a datebook or calendar diary), that is permitted and encouraged. All of the questions pertain to your employment with Wells Fargo.

All information disclosed may be used in the *Strickler v. Wells Fargo* lawsuit to help determine the accuracy of allegations against Wells Fargo. The information disclosed could impact your rights in other lawsuits. Please consult with your attorney if you have any questions about how this may impact your rights in any other lawsuit.

**DISCLAIMER:** BY FILLING OUT THIS SURVEY,  
YOU ARE NOT ENTERING INTO AN ATTORNEY-  
CLIENT RELATIONSHIP. IF YOU HAVE  
QUESTIONS CONCERNING EITHER THIS SURVEY  
OR THE LAWSUIT, YOU MAY CONTACT:  
  
INITIATIVE LEGAL GROUP, LLP  
MONICA BALDERRAMA, ESQ.  
1800 CENTURY PARK EAST, SUITE 200  
LOS ANGELES, CALIFORNIA 90067  
PHONE: 310.556.5637  
MBalderrama@InitiativeLegal.com

Background Information

1. Name: \_\_\_\_\_
2. E-mail address: \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_  
\_\_\_\_\_
4. Telephone Number: \_\_\_\_\_

Information About Your Work for Wells Fargo

5. Do you currently work for Wells Fargo?  YES  NO
6. Do you, or did you ever, work more than 8 hours per day for Wells Fargo as a Home Mortgage Consultant since May of 2005?  
 YES  NO
7. What is your best estimate of the number of pay periods in which you worked more than 8 hours in a day since May of 2005? (The pay periods at Wells Fargo average 26 pay periods per year)  
\_\_\_\_\_ (0-78 pay periods)
8. Do you, or did you ever, work more than 40 hours per week during any given pay period since May of 2005?  
 YES  NO
9. What is your best estimate of the number of pay periods in which you worked more than 40 hours per week since May of 2005?

- \_\_\_\_\_ (0-78 pay periods)
10. Did you have to connect to the Internet to obtain a copy of your pay stub (or "wage statement")?
- YES       NO

- a. If yes, did you connect to the Wells Fargo Intranet through a computer other than one provided by Wells Fargo?

YES       NO

---

Signature

---

Date

Thank you for filling out this Survey! Please return it in the enclosed self-addressed stamped envelope or fax it back to 310-861-9051.

1                   **PROOF OF SERVICE**

2                   STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3  
4                   I am employed in the County of Los Angeles. I declare that I am over the age of  
5                   eighteen (18) and not a party to this action. My business address is: Initiative Legal Group  
6                   LLP, 1800 Century Park East, Second Floor, Los Angeles, California 90067.

7                   On September 8, 2008, I served the within document(s) described below as:

8                   **[PROPOSED] ORDER AUTHORIZING INITIATIVE LEGAL GROUP TO  
9                   SEND SURVEY TO WELLS FARGO BANK'S EMPLOYEES**

10                  on the interested parties in this action by placing true copies thereon enclosed in sealed  
11                  envelopes address as follows:

12                  Lindbergh Porter, Esq.  
13                  Richard H. Rahm, Esq.  
14                  Littler Mendelson  
15                  A Professional Corporation  
16                  650 California Street, 20th Floor  
17                  San Francisco, California 94108

- 18                  (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The  
19                  envelopes were mailed with postage thereon fully prepaid.  
20                  ( ) **PERSONAL:** I caused such envelope to be delivered by hand to the individual(s)  
21                  listed above.  
22                  ( ) **ELECTRONIC SERVICE:** I caused the above-referenced document(s) to be  
23                  transmitted to the above-named individual(s) at the e-mail address listed above.  
24                  ( ) **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be  
25                  delivered via overnight courier service (FedEx) to the individuals at the address listed  
26                  above.  
27                  (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California  
28                  that the above is true and correct.

29                  **EXECUTED** this document on September 8, 2008, at Los Angeles, California.

30                    
31                  \_\_\_\_\_  
32                  Sandy Acevedo

**PROOF OF SERVICE**

## Judicial Panel on Multidistrict Litigation

*Wells Fargo Home Mortgage(OT LITIGATION)*  
Case No. MDL06-1770

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108-2693. On September 9, 2008, I served the within document(s):

- STIPULATION AND [PROPOSED] ORDER ENJOINING CALIFORNIA CLASS MEMBERS FROM PARTICIPATING IN QUESTIONNAIRE IN *STRICKLER* CASE
  - POS

<input type="checkbox"/>	<b>By United States mail.</b> I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses indicated below and ( <i>specify one</i> ):
<input type="checkbox"/>	deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
<input type="checkbox"/>	placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
<input type="checkbox"/>	<b>By overnight delivery.</b> I enclosed the documents in an envelope or package provided by an overnight delivery carrier ( <b>FEDERAL EXPRESS</b> ) and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
<input type="checkbox"/>	<b>By messenger service.</b> I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service (First Legal Services T(415) 626-3111).
<input type="checkbox"/>	<b>By fax transmission. AS APPROVED BY CLERK OF THE PANEL and COURTESY COPY FOR ALL COUNSEL,</b> I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, for our file.
<input checked="" type="checkbox"/>	<b>By e-mail or electronic transmission</b> I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

## SERVICE LIST

**Mevorah, Jason v. Wells Fargo Home Mortgage  
USDC Northern District California  
Case No. 6-CV-01770-MHP**

**Counsel for Plaintiff Jason Mevorah/Carolyn Urso**

Arthur William Lazear, Esq. H. Tim Hoffman, Esq. Hoffman & Lazear 180 Grand Avenue, Suite 1550 Oakland, CA 94612 510 763-5700 Email: <a href="mailto:awl@hoffmanandlazear.com">awl@hoffmanandlazear.com</a> <a href="mailto:hth@hoffmanandlazear.com">hth@hoffmanandlazear.com</a>	Kevin J. McInerney, Esq. McInerney & Jones 18124 Wedge Parkway #503 Reno, NV 89511 775-849-3811 Fax: 775-849-3866 Email: <a href="mailto:kevin@mcinerneylaw.net">kevin@mcinerneylaw.net</a>
---	---

## Counsel for Nationwide Plaintiffs

<p>Charles Scott Russell, Esq. Robert Walter Thompson, Esq. Callahan, McCune &amp; Willis APLC 111 Fashion Lane Tustin, CA 92780 714-730-5700 Fax: 714-730-1642 Email: <a href="mailto:charles_russell@cmwlaw.net">charles_russell@cmwlaw.net</a> <a href="mailto:robert_thompson@cmwlaw.net">robert_thompson@cmwlaw.net</a></p>	<p>George Allan Hanson, Esq. Eric Landon Dirks, Esq. Stueve Helder Siegel LLP 460 Nichols Road Suite 200 Kansas City, MO 64112 816 714-7100 Fax: 816-714-7101 Email: <a href="mailto:hanson@stuevesiegel.com">hanson@stuevesiegel.com</a> <a href="mailto:dirks@stuevesiegel.com">dirks@stuevesiegel.com</a></p>
--	--

James A. Jones, Esq.  
Karla S. Jackson, Esq.  
GILLESPIE, ROZEN, WATSKY,  
MOTLEY & JONES PC  
3402 Oak Grove Ave., Ste. 200  
Dallas TX 75204  
Tel: (214) 720-2009  
Fax: (214) 720-2291  
Email: [jaj@grwlawfirm.com](mailto:jaj@grwlawfirm.com)

**Bodmer, Justine v. Wells Fargo Bank, N.A.  
USDC Middle District of Florida  
Case No. 2:08-CV-00074-MMH-SPC**

**Counsel for Plaintiff, Justine Bodmer**

Andrew Frisch, Esq.  
MORGAN & MORGAN  
7450 Griffin Road, Suite 230  
Davie, Florida 33314  
Tel: (954) 318-0268  
Fax: (954) 333-3515  
E-Mail: [afrizhc@forthepeople.com](mailto:afrizhc@forthepeople.com)

1  
2                   **Hanson, Wade v. Wells Fargo Bank, N.A.**  
3                   **USDC Southern District of Florida**  
4                   **Case No. 08-80182-CV-RYSKAMP/VITUNAC**

5                   **Counsel for Plaintiff, Wade Hanson**

6                   Jennifer J. Ator, Esq.  
7                   HANKINS & ATOR, PL  
8                   371 North Royal Poinciana Blvd.  
9                   Miami Springs, FL 33166  
10                  Tel: (305) 863-8525  
11                  Fax: (305) 863-8535  
12                  E-Mail: [jja@kankinsator.com](mailto:jja@kankinsator.com)

13  
14                  I declare under penalty of perjury under the laws of the United States that the above is  
15                  true and correct.

16                  Executed on September 9, 2008, at San Francisco, California.

17                    
18                  \_\_\_\_\_  
19                  Suzanne Lorusso  
20                  SUZANNE LORUSSO

21                  Firmwide:86583049.1 051995.1003